



1       2.     Venue in this judicial district is proper under 28 U.S.C. §  
2 1391(b)(1)-(2), because a substantial part of the events or omissions giving rise  
3 to the claims in this case occurred in this District.

4       3. The Court has personal jurisdiction over Defendants because they  
5 conduct business in this state, including substantial business in this district.

## PARTIES

7       4. Plaintiff Retina Associates Medical Group, Inc., is a citizen of the  
8 state of California, with its principal place of business in Orange County,  
9 California.

10       5.    Defendant EyeSupply USA, Inc. (EyeSupply), is a Florida  
11 corporation with its principal place of business and registered agent at 6297 W.  
12 Linebaugh Ave., Tampa, FL 33625.

13       6.    Defendant Gregory Charles Stockford is an individual who, on  
14 information and belief resides at 2521 W. North St., Tampa, FL 33614.

15 7. Stockford is an account manager for EyeSupply.

16        8. Defendants, directly or else through other persons acting on their  
17 behalf, conspired to, agreed to, contributed to, assisted with, or otherwise caused  
18 the wrongful acts and omissions, including the dissemination of the junk faxes  
19 addressed in this Complaint.

## THE FAX

21       9. On April 23, 2018, Defendants, or someone acting on their behalf,  
22 used a telephone facsimile machine, computer, or other device to send to  
23 Plaintiff's telephone facsimile machine at (714) 633-7470 an unsolicited  
24 advertisement, a true and accurate copy of which is attached as **Exhibit A** (Fax).

25 10. Plaintiff received the Fax through Plaintiff's facsimile machine.

26        11. The Fax constitutes material advertising the quality or commercial  
27 availability of any property, goods, or services.

1       12. On information and belief, Defendants have sent other facsimile  
2 transmissions of material advertising the quality or commercial availability of  
3 property, goods, or services to Plaintiff and to at least 40 other persons as part of  
4 a plan to broadcast fax advertisements, of which the Fax is an example, or,  
5 alternatively, the Fax was sent on Defendants' behalf.

6       13. On information and belief, Defendants approved, authorized and  
7 participated in the scheme to broadcast fax advertisements by (a) directing a list  
8 to be purchased or assembled, (b) directing and supervising employees or third  
9 parties to send the faxes, (c) creating and approving the fax form to be sent, and  
10 (d) determining the number and frequency of the facsimile transmissions.

11       14. Defendants had a high degree of involvement in, actual notice of, or  
12 ratified the unlawful fax broadcasting activity and failed to take steps to prevent  
13 such facsimile transmissions.

14       15. Defendants created, made, or ratified the sending of the Fax and  
15 other similar or identical facsimile advertisements to Plaintiff and other  
16 members of the "Class" as defined below.

17       16. The Fax to Plaintiff and, on information and belief, the similar  
18 facsimile advertisements sent by Defendants, lacked a proper notice informing  
19 the recipient of the ability and means to avoid future unsolicited advertisements.

20       17. Under the TCPA and 47 C.F.R. § 64.1200(a)(4)(iii), the opt-out  
21 notice for unsolicited faxed advertisements must meet the following criteria:

22           (A) The notice is clear and conspicuous and on the first page of the  
23 advertisement;

24           (B) The notice states that the recipient may make a request to the  
25 sender of the advertisement not to send any future  
26 advertisements to a telephone facsimile machine or machines  
and that failure to comply, within 30 days, with such a request  
meeting the requirements under paragraph (a)(4)(v) of this  
section is unlawful;

27           (C) The notice sets forth the requirements for an opt-out request  
28 under paragraph (a)(4)(v) of this section

1 (D) The notice includes—  
2

3 (1) A domestic contact telephone number and facsimile  
4 machine number for the recipient to transmit such a  
5 request to the sender; and  
6 (2) If neither the required telephone number nor facsimile  
7 machine number is a toll-free number, a separate cost-  
8 free mechanism including a Web site address or e-mail  
9 address, for a recipient to transmit a request pursuant to  
10 such notice to the sender of the advertisement. A local  
11 telephone number also shall constitute a cost-free  
12 mechanism so long as recipients are local and will not  
13 incur any long distance or other separate charges for calls  
14 made to such number; and

15 (E) The telephone and facsimile numbers and cost-free mechanism  
16 identified in the notice must permit an individual or business to  
17 make an opt-out request 24 hours a day, 7 days a week.

18. The Fax and, on information and belief, Defendants' similar  
19 facsimile advertisements lacked a notice stating that the recipient may make a  
20 request to the sender of the advertisement not to send future advertisements to a  
21 telephone facsimile machine or machines and that failure to comply, within 30  
22 days, with such a request meeting 47 C.F.R. § 64.1200(a)(4)(v)'s requirements is  
23 unlawful.

14. The transmissions of facsimile advertisements, including the Fax, to  
15 Plaintiff, lacked a notice that complied with 47 U.S.C. § 227(b)(1)(C) and 47  
16 C.F.R. § 64.1200(a)(4)(iii).

17. On information and belief, Defendants faxed the same or other  
18 substantially similar facsimile advertisements to the members of the Class in  
19 California and throughout the United States without first obtaining the  
20 recipients' prior express invitation or permission.

21. Defendants violated the TCPA by transmitting the Fax to Plaintiff  
22 and to the Class members without obtaining their prior express invitation or  
23 permission and by not displaying the proper opt-out notice required by 47 C.F.R.  
24 § 64.1200(a)(4).

1       22. Defendants knew or should have known that (a) facsimile  
2 advertisements, including the Fax, were advertisements, (b) Plaintiff and the  
3 other Class members had not given their express invitation or permission to  
4 receive facsimile advertisements, (c) no established business relationship existed  
5 with Plaintiff and the other Class members, and (d) Defendants' facsimile  
6 advertisements did not display a proper opt-out notice.

7       23. Pleading in the alternative to the allegations that Defendants  
8 knowingly violated the TCPA, Plaintiff alleges that Defendants did not intend to  
9 send transmissions of facsimile advertisements, including the Fax, to any person  
10 where such transmission was not authorized by law or by the recipient, and to  
11 the extent that any transmissions of facsimile advertisement was sent to any  
12 person and such transmission was not authorized by law or by the recipient, such  
13 transmission was made based on Defendants' own understanding of the law or  
14 on the representations of others on which Defendants reasonably relied.

15       24. The transmissions of facsimile advertisements, including the Fax, to  
16 Plaintiff and the Class caused concrete and personalized injury, including  
17 unwanted use and destruction of their property, e.g., toner or ink and paper,  
18 caused undesired wear on hardware, interfered with the recipients' exclusive use  
19 of their property, cost them time, occupied their fax machines for the period of  
20 time required for the electronic transmission of the data, and interfered with their  
21 business or personal communications and privacy interests.

## CLASS ACTION ALLEGATIONS

23        25. Plaintiff brings this class action on behalf of the following class of  
24 persons, hereafter, the “Class”:

1

2 All persons in the United States who on or after four years prior to the  
3 filing of this action, (1) were sent by or on behalf of Defendants a  
4 telephone facsimile message of material advertising the commercial  
5 availability or quality of any property, goods, or services, (2) with  
6 respect to whom Defendants cannot provide evidence of prior express  
7 invitation or permission for the sending of such fax or (3) with whom  
8 Defendants did not have an established business relationship, and (4)  
9 the fax identified in subpart (1) of this definition (a) did not display a  
10 clear and conspicuous opt-out notice on the first page stating that the  
11 recipient may make a request to the sender of the advertisement not to  
12 send any future advertisements to a telephone facsimile machine or  
13 machines and that failure to comply, within 30 days, with such a  
14 request meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v)  
15 is unlawful, (b) lacked a telephone number for sending the opt-out  
16 request, or (c) lacked a facsimile number for sending the opt-out  
17 request.

18 26. Excluded from the Class are Defendants, their employees, agents,  
19 and members of the judiciary.

20 27. This case is appropriate as a class action because:

21 a. Numerosity. On information and belief, based in part on review of  
22 the sophisticated Fax and online research, the Class includes at least 40  
23 persons and is so numerous that joinder of all members is impracticable.

24 b. Commonality. Questions of fact or law common to the Class  
25 predominate over questions affecting only individual Class members, e.g.:

- 26 i. Whether Defendants engaged in a pattern of sending  
27 unsolicited fax advertisements;
- ii. Whether the Fax, and other faxes transmitted by or on behalf  
of Defendants, contains material advertising the commercial  
availability of any property, goods or services;
- iii. Whether the Fax, and other faxes transmitted by or on behalf  
of Defendants, contains material advertising the quality of any  
property, goods or services;
- iv. The manner and method Defendants used to compile or obtain  
the list of fax numbers to which Defendants sent the Fax and  
other unsolicited faxed advertisements;
- v. Whether Defendants faxed advertisements without first  
obtaining the recipients' prior express invitation or permission;
- vi. Whether Defendants violated 47 U.S.C. § 227;

- vii. Whether Defendants willfully or knowingly violated 47 U.S.C. § 227;
- viii. Whether Defendants violated 47 C.F.R. § 64.1200;
- ix. Whether the Fax, and the other fax advertisements sent by or on behalf of Defendants, displayed the proper opt-out notice required by 47 C.F.R. § 64.1200(a)(4);
- x. Whether the Court should award statutory damages per TCPA violation per fax;
- xi. Whether the Court should award treble damages per TCPA violation per fax; and
- xii. Whether the Court should enjoin Defendants from sending TCPA-violating facsimile advertisements in the future.

c. Typicality. Plaintiff's claim is typical of the other Class members' claims, because, on information and belief, the Fax was substantially the same as the faxes sent by or on behalf of Defendants to the Class, and Plaintiff is making the same claim and seeking the same relief for itself and all Class members based on the same statute and regulation.

d. Adequacy. Plaintiff will fairly and adequately protect the interests of the other Class members. Plaintiff's counsel is experienced in TCPA class actions, having litigated many such cases, and having been appointed class counsel in multiple cases. Neither Plaintiff nor its counsel has interests adverse or in conflict with the Class members.

e. Superiority. A class action is the superior method for adjudicating this controversy fairly and efficiently. The interest of each individual Class member in controlling the prosecution of separate claims is small and individual actions are not economically feasible.

28. The TCPA prohibits the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine.” 47 U.S.C. § 227(b)(1).

1       29. The TCPA defines “unsolicited advertisement,” as “any material  
2 advertising the commercial availability or quality of any property, goods, or  
3 services which is transmitted to any person without that person’s express  
4 invitation or permission.” 47 U.S.C. § 227(a)(4).

5       30. The TCPA provides:

6       Private right of action. A person may, if otherwise permitted by the  
7 laws or rules of court of a state, bring in an appropriate court of that  
state:

8       (A) An action based on a violation of this subsection or the  
9 regulations prescribed under this subsection to enjoin such  
violation,

10      (B) An action to recover for actual monetary loss from such a  
11 violation, or to receive \$500 in damages for each such  
violation, whichever is greater, or

12      (C) Both such actions.

13 47 U.S.C. § 227(b)(3)(A)-(C).

14       31. The TCPA also provides that the Court, in its discretion, may treble  
15 the statutory damages if a defendant “willfully or knowingly” violated Section  
16 227(b) or the regulations prescribed thereunder.

17       32. Defendants’ actions caused concrete and particularized harm to  
18 Plaintiff and the Class, as

19       a. receiving Defendants’ faxed advertisements caused the recipients to  
20 lose paper and toner consumed in printing Defendants’ faxes;

21       b. Defendants’ actions interfered with the recipients’ use of the  
22 recipients’ fax machines and telephone lines;

23       c. Defendants’ faxes cost the recipients time, which was wasted time  
24 receiving, reviewing, and routing the unlawful faxes, and such time  
25 otherwise would have been spent on business activities; and

26       d. Defendants’ faxes unlawfully interrupted the recipients’ privacy  
27 interests in being left alone and intruded upon their seclusion.

1       33. Defendants intended to cause damage to Plaintiff and the Class, to  
2 violate their privacy, to interfere with the recipients' fax machines, or to  
3 consume the recipients' valuable time with Defendants' advertisements;  
4 therefore, treble damages are warranted under 47 U.S.C. § 227(b)(3).

5       34. Defendants knew or should have known that (a) Plaintiff and the  
6 other Class members had not given express invitation or permission for  
7 Defendants or anyone else to fax advertisements about Defendants' property,  
8 goods, or services, (b) Defendants did not have an established business  
9 relationship with Plaintiff and the other Class members, (c) the Fax and the other  
10 facsimile advertisements were advertisements, and (d) the Fax and the other  
11 facsimile advertisements did not display the proper opt-out notice.

12       35. Defendants violated the TCPA by transmitting the Fax to Plaintiff  
13 and substantially similar facsimile advertisements to the other Class members  
14 without obtaining their prior express invitation or permission and by not  
15 displaying the proper opt-out notice required by 47 C.F.R. § 64.1200(a)(4)(iii).

16 WHEREFORE, Plaintiff, for itself and all others similarly situated,  
17 demands judgment against Defendants, jointly and severally, as follows:

18 a. certify this action as a class action and appoint Plaintiff as Class  
19 representative;  
20 b. appoint the undersigned counsel as Class counsel;  
21 c. award damages of \$500 per TCPA violation per facsimile pursuant  
22 to 47 U.S.C. § 227(a)(3)(B);  
23 d. award treble damages up to \$1,500 per TCPA violation per  
24 facsimile pursuant to 47 U.S.C. § 227(a)(3);  
25 e. enjoin Defendants and their contractors, agents, and employees  
26 from continuing to send TCPA-violating facsimiles pursuant to 47  
27 U.S.C. § 227(a)(3)(A);

- 1 f. award class counsel reasonable attorneys' fees and all expenses of
- 2 this action and require Defendants to pay the costs and expenses of
- 3 class notice and claim administration;
- 4 g. award Plaintiff an incentive award based upon its time expended on
- 5 behalf of the Class and other relevant factors;
- 6 h. award Plaintiff prejudgment interest and costs; and
- 7 i. grant Plaintiff all other relief deemed just and proper.

**DOCUMENT PRESERVATION DEMAND**

9 Plaintiff demands that Defendants take affirmative steps to preserve all  
10 records, lists, electronic databases, or other itemization of telephone or fax  
11 numbers associated with the Defendants and the communication or transmittal of  
12 advertisements as alleged herein.

13  
14 DATED: August 16, 2018                   EDWARDS POTTINGER LLC

15  
16 By: */s/ Seth M. Lehrman*  
17 Seth M. Lehrman  
18 Attorney for Plaintiff  
19 RETINA ASSOCIATES MEDICAL GROUP,  
20 INC.

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